



POLICE DEPARTMENT

March 22, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Laura Barbato
Tax Registry No. 944350
Police Service Area 8
Disciplinary Case No. 2010-3143

The above named member of the Department appeared before me on January 22, 2013, charged with the following:

1. Said Police Officer Laura Barbato, assigned to the Housing Borough Bronx/Queens Impact Response Team, while on duty, on October 27, 2010, at a location known to this Department, in Bronx County, did fail and neglect to properly safeguard her off duty firearm, to wit a 9mm, Glock 26, in that said officer did leave said firearm unattended and unsecured inside of a vehicle.

P.G. 204-08, Page 2, Paragraph 7 – FIREARMS GENERAL REGULATIONS,
UNIFORMS AND EQUIPMENT

2. Said Police Officer Laura Barbato, assigned to Housing Borough Bronx/Queens Impact Response Team, while on duty, on October 27, 2010, at a location known to this Department, in Bronx County, did fail and neglect to properly safeguard the New York City Police Radio and Ghost Set issued to said officer.

P.G. 203-05, Page 1, Paragraph 13 – PERFORMANCE ON DUTY GENERAL,
GENERAL REGULATIONS

The Department was represented by Mark Berger, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through her counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent, who has been working for the Department for five and a half years, is currently assigned to Police Service Area (PSA) 8. Respondent has been assigned to PSA 8 for nine months and the Conditions Team for three months. Respondent joined the Conditions Team when her commanding officer recognized her notable arrests and offered her a position, which Respondent accepted. On the Conditions Team, Respondent addresses certain conditions, specifically by trying to apprehend subjects wanted for serious offenses. Respondent performs those responsibilities primarily in uniform but also in plainclothes.

Before PSA 8, Respondent had other assignments. Respondent was in PSA 2, then Bronx Narcotics for nine months from May 2010 to December 2010, and then the Housing Bronx Impact Response Team, which was her last assignment before PSA 8. Respondent explained that she had to apply for Bronx Narcotics and she received the position based on her good arrest activity, a high recommendation from her commanding officer, and an excellent sick record. Respondent wanted to join Bronx Narcotics because her personal observations of narcotics' damaging effects motivated her "to attempt to rid the streets of some of these dealers." Respondent believed that she could

become a detective if she spent approximately one and a half years working undercover in Bronx Narcotics.

On October 27, 2010, Respondent was working in Bronx Narcotics and had been doing so for approximately six months. Respondent, along with others comprising a seven- or eight-person field team, planned to do a "buy and bust" operation. Respondent was in a vehicle with two other undercover members. As the primary undercover, Respondent's job "was to go out, buy the drugs, and the [f]ield [t]eam would go in and apprehend the subject." Respondent recalled that she had approximately three weeks of undercover training. Respondent explained that she wanted to act like herself in the operation because she did not want to draw any attention by appearing awkward. Respondent was wearing a t-shirt, casual jeans, and sneakers.

Prior to buying the drugs, Respondent and her team circled around the area to check for any "regulars." They parked the car, a 1996 Hyundai rental car, at 187 Street and Southern Boulevard. Respondent explained that using rental cars instead of undercover cars was standard practice "to blend in . . . because dealers know what Police cars look like." Respondent consulted with her team before leaving.

Respondent planned on going to Crotona Avenue, where Respondent had conducted prior successful buy and bust operations. Respondent knew that there would probably be at least six drug dealers and that they generally frisk buyers. Respondent explained that she knew about this frisking practice because she had seen her partner frisked in a previous operation in that same location. When questioned about her training on possible frisking, Respondent stated:

I mean, in that situation, there's no real training for that. It's just based on whoever is frisking you. If they do feel a weapon on you,

are they gonna grab it? Are you gonna flinch away? There's no real training based on that. It just goes with the experience.

Respondent "decided that it would be in [her] best interest for the buy to leave the gun in the car." In addition to the firearm, a radio that the ghost¹ would carry and the ghost wire were in the car. (Respondent did not carry her shield with her that day because its discovery could compromise the operation.) Respondent gathered those items together and put them in a black backpack folded in half and underneath the passenger's seat. Respondent locked the car. Then Respondent and the two undercover members in the same car left the vehicle.

Respondent approached the targeted location with another undercover member acting like he was Respondent's boyfriend. This walk from Respondent's vehicle to the targeted location was two minutes. When approaching the corner of Crotona Avenue and 187 Street, Respondent saw a man standing outside the front of the building. Respondent grabbed her partner's hand as if he was her boyfriend and both continued to walk toward the target. When Respondent approached, Respondent made eye contact with the dealer and gave a head nod. The dealer looked away, but Respondent turned around and the dealer asked "if [she] was looking or what [she] needed." Respondent asked him if he was "up," and the dealer motioned Respondent to enter the lobby.

Respondent entered the lobby with her undercover partner. Two other men were in the corner, leaving Respondent unable to see from outside the door. Three other men were in the lobby as well. After being asked about what she was looking for, Respondent "told him 20, because at that point [Respondent] wasn't sure what he was selling, if it was marijuana, crack, [or] heroin." The drug dealer said "fine" and reached into a large

¹ Officer who ensures the safety of the undercover during the buy phase of a buy operation.

backpack taking out a large amount of marijuana in little tiny bags, which Respondent noted are known as “nickel bags.” The drug dealer told Respondent to pick out four bags. While Respondent was picking out the bags, her partner was talking to another dealer who sold her partner some crack. No one frisked Respondent during this operation. Respondent believed no one frisked her partner, but she was not entirely focused on him throughout the operation. After the purchase, Respondent put the four bags of marijuana into her pocket and went to her partner to see if he was ready to leave. Her partner said he was ready and they exited the door holding hands. Respondent and her partner motioned to a detective—the ghost in this operation across the street that the transaction was successful. However, this operation did not lead to any arrests. They then walked back to the car. This walk took approximately 10 minutes. Respondent estimated that about 10 to 15 minutes elapsed from her leaving the vehicle to returning to the vehicle.

Respondent walked with her partner back to the car. Her partner noticed the passenger’s fly window “the smaller like triangle window that’s behind the passenger’s window” was damaged. Her partner told Respondent that the car was broken into. After some disbelief, Respondent noticed the punched out window and blood on the glass still attached to the window. Respondent further saw glass and blood on the seat. Respondent quickly entered the vehicle and discovered her bag containing her firearm, radio, and ghost kit was missing. In addition to the bag, her partner’s wallet and shield were stolen. Respondent immediately called her sergeant. The sergeant told her not to panic and came over. After Respondent told the sergeant what had happened, the sergeant called a Level One mobilization to look for the firearm. Respondent and her

partners searched nearby garbage cans in case the thief threw out the firearm, but they did not find it.

Eventually, a DNA match using blood found on the thief's do-rag left in the car led to an identified suspect. However, the firearm was never recovered. Respondent testified before a grand jury about this incident, but has heard nothing about the case since the day she testified.

Respondent testified about how she felt about her actions. At the time of the incident, Respondent did not think she was doing anything wrong. In retrospect, Respondent now knows she should have given the firearm, radio, and ghost kit to somebody in the field team or the sergeant. Respondent noted that she never received any training on this particular situation and no handbook or manual specifically addressed that she was not allowed to leave the firearm, radio, and ghost kit locked in the car when doing a drug deal.

After the incident occurred, Respondent continued working in Bronx Narcotics making purchases for two more months. Respondent had to use her larger service weapon during this time. Respondent then was reassigned to the Housing Bronx Impact Response Team. Although Respondent was not told why she was reassigned, Respondent believes this incident primarily influenced the reassignment.

On cross-examination, Respondent affirmed that she saw an undercover frisked during a previous operation in the target location. However, Respondent acknowledged that she knew of only one frisk there. Respondent did not inform anyone about the frisk occurring. Respondent had not heard from anyone that frisking was common in the target location.

Respondent learned that she would be involved in this operation while she was at the station house. Respondent had the opportunity to leave her firearm at the station house, but chose not to because she would need it if she acted as a ghost. In addition, not having her firearm could “take away a lot of time from what [the] mission was.” Respondent testified that leaving her firearm at the station house could have wasted time and she wanted “to stay on that one mission.” Respondent did not tell her supervisor that she was going to be unarmed at this buy.

Respondent took her firearm, radio, and ghost kit with her when leaving the station house. Respondent reiterated that she put those items in a backpack under the front passenger’s seat. Respondent did not ask the ghost to carry her firearm and did not tell the ghost that she was unarmed when leaving the car. Respondent might have mentioned that she was unarmed to her partner (acting as her boyfriend), but she did not recall her partner acknowledging that. Even if he was aware she was unarmed, Respondent conceded that she did not tell her partner where she put her firearm. Nobody other than Respondent knew that the firearm was in the vehicle during the operation.

After acknowledging that the Patrol Guide applies to Respondent, Respondent conceded that she is obligated to safeguard her firearm. Respondent acknowledged that she knew on the day of the incident—as she noted at her official Department interview police officers are not allowed to store firearms inside a vehicle and that police officers must safeguard their firearms.²

Upon further questioning, Respondent noted that the operation occurred around noon. Respondent also described further the backpack containing the firearm, radio, and

² During the Department’s summation, the Department entered into evidence the Buy and Bust Tactical Plan for Respondent’s operation on October 27, 2010 [Department Exhibit (DX) 1] and an excerpt from the Organized Crime Control Bureau Manual Procedure Number 40-15, “Field Operation Tactical Procedures,” pages 1 and 2 of 13 (DX 2).

ghost kit. Respondent said it was a standard North Face bag. Respondent put the bag “right in the center of the seat which was on the passenger’s side.” The bag when folded was larger than a hand and like a size of a book. The vehicle’s seats were “dark grey.” Respondent did not think anybody could see the bag through the window from outside the car.

PENALTY

In order to determine an appropriate penalty, Respondent’s service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974).

Respondent was appointed to the Department on July 9, 2007. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pleaded Guilty to failing to properly safeguard her off-duty firearm by leaving it unattended and unsecured inside of a vehicle. She has also pleaded Guilty to failing to properly safeguard her New York City Police radio and ghost set. Respondent argued that rarely do failure to safeguard Charges and Specifications result from on-duty activity. She explained that while working in an undercover buy and bust operation, she made a decision that she would not carry her firearm and radio to the set. Although Respondent noted that her undercover partner should have been aware of this decision because she told him, but did not hear a response, neither her supervisor or the ghost involved in the operation were aware of her decision to be unarmed.

Respondent testified that she placed her firearm and radio in a knapsack that she had, folded the bag in half to the size of a book, and placed it under the passenger seat in a vehicle. She noted that the bag could not be seen from outside of the vehicle. The

Court notes that Respondent testified that the knapsack was black and the covering on the car seat was grey.

While Respondent in an effort to make her buy operations more effective by being unarmed and without her radio, she still failed to secure the items. She could have informed her supervisor of her intentions and received direction on where she could leave her items during the operation for safekeeping. Clearly leaving the items in a parked car during daylight hours under a car seat was not secure.

The Assistant Department Advocate (Advocate) contended that 20 vacation days is the standard penalty for someone who fails to safeguard his or her firearm and being on or off duty does not change this requirement. In addition, the Advocate stated that Respondent ought to forfeit an additional five days for failing to safeguard her radio and ghost set which were never recovered and all items could be in possession of drug dealers.

Based on the record established by the Department, this Court does not find mitigating factors here which would warrant a lesser penalty.

Accordingly, it is recommended that Respondent forfeit 25 vacation days.

Respectfully submitted,

Claudia Daniels-DePeyster

by *AK. Kumpke*

Claudia Daniels-DePeyster

Assistant Deputy Commissioner Trials

APPROVED

APR 08 2013

Raymond W. Kelly
RAYMOND W. KELLY
POLICE COMMISSIONER